UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 4, 2015

10:03 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(CC: Doc. No. 8618) Motion to Further Extend the Date by Which Objections to Claims Must be Filed, filed by Joseph A. Shifer on behalf of ResCap Liquidating Trust.

(CC: Doc# 8380, 8542) ResCap Borrower Claims Trust's Eighty-Fifth Omnibus Objection to Claims ((I) No Liability Borrower Claims, (II) Redundant Borrower Claims and (III) Misclassified Borrower Claims).Going Forward solely as it relates to the claims filed by Phenon Walker (Claim No. 4966) and Thomas G. Cooper (Claim No. 6272)

(CC: Doc# 8530) Hearing RE: Objection of the ResCap Borrower Claims Trust to Proofs of Claim

(CC: Doc# 8529) Hearing RE: ResCap Borrower Claims Trust's Objection to Claim No. 4418.

Transcribed by: Penina Wolicki
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

A P P E A R A N C E S :

MORRISON & FOERSTER LLP

Attorneys for ResCap Borrower Claims Trust

250 West 55th Street

New York, NY 10019

BY: JORDAN A. WISHNEW, ESQ.

BRADLEY ARANT BOULT CUMMINGS LLP

Attorneys for ResCap Borrower Claims Trust

100 North Tryon Street

Suite 2690

Charlotte, NC 28202

BY: AVERY ANN SIMMONS, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for ResCap Liquidating Trust
1177 Avenue of the Americas
New York, NY 10036

BY: JOSEPH A. SHIFER, ESQ.
NATHANIEL ALLARD, ESQ.

ERICKSON, THORPE & SWAINSTON, LTD.
Attorneys for Claimant Gagnon et al.
99 West Arroyo Street
Reno, NV 89509

BY: THOMAS P. BEKO, ESQ. (TELEPHONICALLY)

PHENON WALKER (TELEPHONICALLY)
Claimant Pro Se

ALSO PRESENT: (TELEPHONICALLY)
DAVID CUNNINGHAM, ESQ., ResCap Liquidating Trust
DEANNA HORST, ESQ., ResCap Liquidating Trust

P R O C E E D I N G S

THE COURT: All right, please be seated. We're here in Residential Capital, number 12-12020

MR. SHIFER: Good morning, Your Honor, Joseph Shifer of Kramer Levin Naftalis & Frankel, for the ResCap Liquidating trust.

THE COURT: Just hang on.

All right, whoever is on the phone, the CourtCall operator, whoever is on the phone where we're getting that background noise, put your phones on mute unless you're speaking. If I continue to get the background noise, you're going to get cut off from the call.

Go ahead, Mr. Shifer.

MR. SHIFER: Your Honor, the first matter going forward appears on page 2 of the agenda. It's matter 1 under contested matters. It's the ResCap Liquidating Trust's motion to further extend the date by which objections to claims must be filed. That's at docket number 8618.

Your Honor, in support of the motion, the Liquidating Trust admitted the declaration of Deanna Horst, the Liquidating Trust's chief claims officer. Ms. Horst is on the phone if Your Honor has any questions.

THE COURT: Okay.

MR. SHIFER: Just a note on service, Your Honor, because this seems to come up each time we file these motions.

The motion was filed on the special service list, the general service list, as well as all holders of disputed claim. This is out of an abundance of caution, even though the plan provides that the deadline may be extended without notice to any party. KCC, our noticing agent, filed an affidavit of service at docket number 8633 and a supplemental affidavit at 8671.

Your Honor, by the motion, the Liquidating Trust seeks to extend the deadline to object to claims to March 15th, 2016, which is a nine-month extension from the current deadline. As we stated in the motion, and I can quickly go through some of the top-line numbers, this case involved quite a number of claims. There was a total of 7,487 claims filed. To date, 3,897 claims have been expunged, with 2,933 claims withdrawn or allowed. And since filing the motion, in fact, 58 additional claims were resolved.

So as of today, Your Honor, there are 599 total unresolved claims. This is down from the initial starting point of 7,487. So we've resolved more than ninety percent of the total claims pool. As of today, there are 280 nonborrower claims with 319 borrower claims remaining. And of course, Your Honor, these numbers may actually increase, because sometimes we do receive late-filed claims, even today.

Your Honor, since the last extension of the objection deadline, the Trust resolved an additional 920 claims,

including 260 million -- over 260 million in general unsecured claims, and 150 million in secured claims. I think Your Honor can take from those numbers, that the Trusts have been busy. We certainly are --

THE COURT: I can attest that the Trusts have been busy, because I've been busy.

MR. SHIFER: Sure. And for every claim that comes to the courtroom, of course, there are additional efforts outside of the courtroom to resolve the claims and try to be efficient with Your Honor's time.

So with that, Your Honor, the Liquidating Trust would ask that you grant the motion. There were four objection that were filed.

THE COURT: Yes, and let me hear -- I know -- I know the Thompsons are going to be here this afternoon. But one of the objections is by Elda and Maria Thompson. Are either of you on the phone?

All right. I've reviewed their objection. The next objection was by Julio Pichardo. Mr. Pichardo, are you on the phone?

The next objection is by Felix Abu, A-B-U. Are you on the phone, Mr. Abu?

And the last objection is by Michael E. Boyd. Mr. Boyd, are you on the phone?

All right, Mr. Shifer, I'm going to grant the motion.

I'm going to enter a written order to that effect. I've considered each of the objections that have been filed. The motion carefully lays out the total number of claims, the number of claims remaining, some details about the claims process. And I can certainly understand that the remaining claimants are sometimes frustrated by what they perceive as delay. But this has been an extremely complicated case. The claims resolution process is very time-consuming for the debtors' counsel, or the two Trusts' counsel and for the Court. Very substantial progress has been made.

This is obviously something I'm very closely aware of what's been going on. And I believe that the Trusts have been proceeding diligently in the claims process. More time is clearly needed to resolve the remaining claims, so the motion is granted.

MR. SHIFER: Thank you, Your Honor.

Just a minor housekeeping matter.

THE COURT: Yes.

MR. SHIFER: Last night, there was an additional filing on the docket; it's docket number 8710. It's by Christopher and Quandalyne Murphy. On the docket, Your Honor, it was linked as an objection to the motion, but on reviewing this paper, it has nothing to do with it, and I just wanted to note that on the record.

THE COURT: Okay, thank you very much.

MR. SHIFER: Thank you. And may we be excused?

THE COURT: Yes, you may.

MR. SHIFER: Thank you, Your Honor.

THE COURT: Thanks very much, Mr. Shifer.

THE COURT: All right, Mr. Wishnew.

MR. WISHNEW: Good morning, Your Honor. Just let me take a moment and --

THE COURT: Sure.

MR. WISHNEW: -- echo Mr. Shifer's comments and also thank the Court and its staff for its continued diligence with the claims process.

Your Honor, the next matter on the agenda is under page 3, under Roman numeral III, claims objections, it's the ResCap Borrower Claims Trust's eighty-fifth omnibus objection to claims. This is going forward as to two matters that were carried from the last omnibus hearing. Those are the claims by Phenon Walker, claim number 4966, and Thomas Cooper, 6272.

I believe Ms. Walker is on the phone.

THE COURT: I was advised that -- Ms. Walker, are you on the phone?

MS. WALKER: I am, yes, Your Honor.

THE COURT: Okay. Why don't you proceed, first, Mr. Wishnew, and then we'll give Ms. Walker an opportunity to respond, okay?

MR. WISHNEW: Very good, Your Honor. As Your Honor is

aware the Court has already granted the eighty-fifth omnibus objection as to all but two of the claims. There were issues concerning service on the two claimants whose claims are being addressed today, and so we wanted to provide them with --

THE COURT: The two claims are the Walker claim, which is claim 4966 and the Cooper claim, 6272.

MR. WISHNEW: That's correct, Your Honor.

THE COURT: Okay.

MR. WISHNEW: Thank you. The Borrower Trust received a response from Ms. Walker on May 8th, 2015, which is docketed at 8599. The Borrower Trust did not receive a response from the Coopers.

With regards -- the Borrower Trust objected to claim number 6272 filed by the Coopers because it was duplicative of claim number 6270. The only difference between the two claims is that claim 6272 is asserted as a secured claim, whereas claim 6270 is asserted as a general unsecured claim.

The Borrower Trust was alerted on April 22nd, 2015 that the objection was served on the incorrect e-mail address on file for the Coopers, that copies that were mailed to the Coopers were came back unclaimed. The Borrower Trust promptly re-served the Coopers at the correct e-mail address and informed them they had until May 15th to respond and that a hearing on their claim would be held on June 4th.

The stated basis of the Cooper's claim is home equity,

failure to account for payments. The Coopers appear to be asserting their claim based on GMAC Mortgage's purported failure to provide them with an accounting of the payments made to GMAC Mortgage under their home equity line of credit.

Nowhere in proof of claim 6270 or 6272, did the Coopers provide a reason that their claim should be considered secured. Therefore, to avoid the possibility of multiple recoveries for a single claim by the Coopers, the Borrower Trust respectfully requests that the Court disallow and expunge 6272, and claim 6270 will remain on the claims register, subject to further objections on any other basis.

THE COURT: All right. No one is appearing for the Coopers. The Court has reviewed the eighty-fifth omnibus objection with respect to the claims of the Coopers, and the objection is sustained.

MR. WISHNEW: Thank you very much, Your Honor.

THE COURT: Okay. And include that in a separate order, okay?

MR. WISHNEW: Will do. Will do, Your Honor.

THE COURT: All right. Okay. So let's move on to --

MR. WISHNEW: Moving on to Ms. Walker's claim.

THE COURT: -- the Walker claim.

MR. WISHNEW: The Borrower Trust filed a reply in support of the objection solely as to Ms. Walker's claim. That was docketed at 8683.

In support of the objection, in the reply, the Borrower Trust submitted declarations by David Cunningham, director to the ResCap Liquidating Trust. Mr. Cunningham is on the phone today and available to answer any questions the Court might have.

GMAC Mortgage's purported liability appears to stem from Ms. Walker's belief that GMAC Mortgage did not transfer all the insurance proceeds being held by GMAC Mortgage on her behalf when it transferred servicing of her loan to Ocwen in February of 2013. As set forth in the Trust's filings, the debtors' books and records show that at the time the servicing was transferred to Ocwen, the entire balance of the insurance proceeds that had been received by the debtors related to claims filed by Ms. Walker were transferred to Ocwen.

THE COURT: So that total that was transferred was, what, 14,000 and --

MR. WISHNEW: Roughly 14,000 dollars, Your Honor. Give me one moment, I can try and --

THE COURT: 14,403.75.

MR. WISHNEW: That's correct, Your Honor. Yes.

Ms. Walker's only evidence that the proceeds were not transferred is that her current servicer, SLS, who acquired servicing from Ocwen, purportedly does not have the full amount of proceeds. However, the amount currently held by her servicer, SLS, has no bearing on the amount that was

transferred by the debtors to Ocwen two years ago.

As a result, Ms. Walker has failed to prove that she is owed any money by the debtors' estates, and we'd ask that the claim be expunged.

THE COURT: All right. Ms. Walker, go ahead.

MS. WALKER: Thank you very much, Your Honor. What we're attempting to prove or get the documentation from SLS, the current servicer, is the amount that GMAC actually transferred to Ocwen. And they are providing me with -- well, actually I received a letter just yesterday -- I believe yesterday -- where they are still investigating the amount that was transferred from GMAC to Ocwen.

There was no information presented in the debtors' objection as to the transfer of the monies to Ocwen. And I haven't received a response back in regards to any proof.

And I'm kind of skeptical also, because of all my historical information from GMAC, my loan documents all the way to securitization paperwork, has just not been correct.

THE COURT: May I ask you this --

MS. WALKER: And so with that said, I am just wanting verification of the amount. So they are saying the escrow amount was actually transferred, the 14,000. And I have no actual proof that that was actually done. And again, the current servicer, who received the funds from Ocwen, who received funds from GMAC, that is what I'm trying to verify.

THE COURT: May I ask you this, Ms. Walker?
MS. WALKER: Yes.
THE COURT: Because in reviewing the papers --
MS. WALKER: Yes.
THE COURT: -- the trust submitted the servicing notes, and the servicing notes, at page 2 reflect that the balance -- the unapplied balance that was transferred to Ocwen was $14,403.75. That's --
MS. WALKER: Okay.
THE COURT: -- that's the record -- that's the piece of paper that was submitted in support of the objection that appears to show the amount that was transferred to Ocwen. Do you have those servicing notes? You should have been provided with a copy of it.
MS. WALKER: Yeah, and the --
THE COURT: I know you're concerned. Because the -- I know you have -- you have the misfortune of having quite a few insurance claims relating to your property, and what the record before me would show is when GMAC received payments, they deposited it in escrow -- they were less than the full amount of your insurance claims -- and that the amounts remained in escrow, and that as of August -- excuse me -- as of August 26th, 2013, the unapplied balance was this 14,403.75. Let me stop there. Go ahead.
MS. WALKER: That is correct, Your Honor. That is the

amount that's left and the amount that I've been informed was transferred from GMAC to Ocwen. So what my attempt is to verify that 14,403.75 was actually transferred from escrow of GMAC to Ocwen, who subsequently transferred it to the current servicer. So that is what is in dispute, the amount transferred, that 14,403.75.

THE COURT: I guess let me ask this. I mean --

MS. WALKER: Yes.

THE COURT: -- I understand your inquiry, but I'm not -- your uncertainty doesn't create a dispute. Okay?

They -- I'm playing devil's advocate here, but their position is, we've put in the record that shows through the servicing notes, what the amount was that was transferred to Ocwen. Whether Ocwen transferred the right amount to SLS, I would have no knowledge.

MS. WALKER: Correct, and but also to -- even though the record that is showing 14,000 was transferred to Ocwen --

THE COURT: Yes.

MS. WALKER: -- there should be proof from Ocwen that they were in receipt of those funds. Isn't that correct?

THE COURT: Well, you don't get to ask me the questions. So --

MS. WALKER: I'm sorry.

THE COURT: -- I'm not -- that wasn't intended as a criticism. I understand your question. So Ocwen isn't in

front of me either. But let me ask Mr. Wishnew, what are the records that show the amount that was transferred to Ocwen? Is there anything other than the servicing note?

MR. WISHNEW: Beyond the servicing notes, Your Honor, no. As Your Honor correctly noted, Ocwen is not before this Court. And to extent Ms. Walker's concerned about what Ocwen received, that's information she can get from Ocwen. It doesn't amount to a claim allowable against GMAC Mortgage.

THE COURT: Let me ask you this. Ms. Walker, has SLS told you how long it's going to take the -- it shouldn't be that complicated an issue to investigate, but have they told you how long it's going to take?

MS. WALKER: They requested -- they sent a letter requesting fifteen more days. So -- and based upon what the outcome was here, I was going to call and find out. But correct, I thought that this would be real easy, they could just verify. That's what they're in the process of doing.

THE COURT: Okay.

MS. WALKER: Verifying the amount that was actually in escrow from GMAC, transferred to Ocwen, and then Ocwen in turn will verify what was sent to them. But the chain is what I'm looking for. And I have no other recourse, if the money was not sent to Ocwen as stated.

THE COURT: Well, I'm not ruling from the bench, but let me just say that even if I were to sustain the objection,

there's a procedure under Section 502(j) where you could ask for a reconsideration if the facts -- but here's what I'm going to do. I'm trying to log onto my computer. So just bear with me a second, okay?

MS. WALKER: Thank you.

(Pause)

THE COURT: May I ask you this, Ms. Walker? Are you disputing that the amount that GMAC was holding in escrow was this $14,403.75? To be clear, I just want to make sure I understand exactly what the dispute it. That -- in their objection, GMAC -- the Trust has set out how much GMAC received from the insurers for each of your claims and indicates it was deposited in escrow. And at the time that was transferring -- that the servicing was transferred to Ocwen, the balance in the account was the $14,403.75. Do you agree that that was the amount that was being held in escrow by GMAC?

MS. WALKER: You know, Your Honor, I -- the exact amount, I'm going to -- I would have -- I'm so sorry; I don't know the exact number right now. I have to go right back in my paperwork and total it up here.

THE COURT: Look, here's what I'm going to do.

MS. WALKER: However --

THE COURT: Mr. Wishnew, do we have an omnibus date in July?

MR. WISHNEW: July 16th, Your Honor.

THE COURT: Okay. I'm going to adjourn this specific objection to the July date. What I would like you to do, Mr. Wishnew, is communicate --

Ms. Walker, you don't have an attorney. Am I correct?

MS. WALKER: That's correct, Your Honor.

THE COURT: Okay. I ask that because Mr. Wishnew couldn't talk to you directly if you had an attorney, but since you don't have an attorney, he can -- he or one of his colleagues.

I'd like you to follow up with Ms. Walker and see whether you can get this resolved. Perhaps, Mr. Wishnew you get -- contact Ocwen and get a piece of paper from Ocwen that shows what the amount that was transferred on what date, and see whether this issue can be resolved consensually. If not, I'll put it back on the hearing in July. You can appear by telephone again, Ms. Walker, if you can't get it resolved, and I'll rule at that time. Okay?

MS. WALKER: Thank you. Thank you, Your Honor.

THE COURT: All right. Thanks very much, Ms. Walker. And you're excused. You're welcome to stay on the phone, or you can hang up now, if you wish.

MS. WALKER: Could I just ask, will someone contact me, or should I contact them? I couldn't exactly get the person --

THE COURT: Sure.

MS. WALKER: -- that you mentioned, the spelling of his name or --

THE COURT: Right. Mr. Wishnew, will you or one of your colleagues contact Ms. Walker?

MR. WISHNEW: Yes, Your Honor.

THE COURT: You're going to hear from one of the Morrison & Foerster attorneys, okay?

MS. WALKER: Got it. Okay. Thank you.

THE COURT: Thanks very -- thanks very much --

MS. WALKER: Have a good morning. Thank you.

THE COURT: Okay.

MS. WALKER: Bye-bye.

THE COURT: All right. Go ahead, Mr. Wishnew.

MR. WISHNEW: Thank you, Your Honor. Your Honor, the next matter on today's calendar is on the bottom of page 3, item number 2, the ResCap Borrower Claims Trust's objection to claim number 4418 filed by David Cruz, Jr.

Your Honor, this was filed at docket number 8529. The Borrowers Trust, to date, has not received any response from Mr. Cruz on the objection.

Mr. Cruz filed a general unsecured claim designated as claim number 4418 on November 9th, 2012, for 316,000 dollars plus interest and accruals. Through the claim, the claimant attempts to further litigate the pre-petition court action that is currently pending in the County Court for the 17th Judicial

Circuit in and for Broward County Florida. The claimant's second -- the claimant's complaint was filed on July 14th, 2011, and amended in February 2012 to add GMAC Mortgage. Its asserted causes of action relate to the debtors' origination of the loan on June 8th, 2007 and servicing of his loan, including alleged violations of the Fair Debt Collection Practices Act, the Florida Consumer Collection Practices Act, and the Florida Deceptive and Unfair Trade Practices Act.

Your Honor, through this objection, the Borrower Trust seeks to expunge the proof of claim filed by Mr. Cruz. His allegations are without merit, and each cause of action is either barred by the statute of limitations or cannot be supported by the debtors' alleged actions. The --

THE COURT: You believe that the statute of limitations is a complete defense to each of the claims that's been asserted?

MR. WISHNEW: Yes, Your Honor.

THE COURT: Okay.

MR. WISHNEW: Yes.

THE COURT: All right. Since Mr. Cruz hasn't appeared; I've reviewed the papers. I'm going to take it under submission. We'll enter an appropriate order. Okay?

MR. WISHNEW: Thank you very much, Your Honor.

THE COURT: All right.

MR. WISHNEW: Your Honor, that brings us to the last

matter on today's calendar, which is being handled by Ms. Avery Simmons, of Bradley Arant Boult & Cummings. That is the objection of the ResCap Borrower Claims Trust to proofs of claim filed by Pamela Longoni and Jean Gagnon.

THE COURT: Is anybody appearing for the claimants?

MR. BEKO: I am, Your Honor. Thomas Beko on behalf of the claimants, Gagnon and Longoni.

THE COURT: Okay.

MR. BEKO: Thank you for allowing me to appear by phone.

THE COURT: Absolutely.

MS. SIMMONS: Good morning, Your Honor. Avery Simmons on behalf of the ResCap Borrower Claims Trust, here appearing for GMAC Mortgage and the ETS on behalf of their objection filed to the proof of claim filed by Pamela Longoni and Jean Gagnon.

Ms. Longoni and Mr. Gagnon's proof of claim is based entirely on the allegations in the third amended complaint filed in the United States District Court for the District of Nevada. Ms. Longoni and Mr. Gagnon assert eight claims in that litigation. The first for violation of certain Nevada statutes related to Nevada's nonjudicial foreclosure scheme; the second for violation of Nevada Statute 205.372; the third for fraud and misrepresentation; the fourth for negligence and negligent misrepresentation; five, for breach of contract; sixth for

intentional infliction of emotional distress, promissory estoppel, and conspiracy.

It is the position of GMAC Mortgage and ETS that the claim should be disallowed because all of the claims fail as a matter of law. As an initial matter, GMAC --

THE COURT: Let me stop you there, because -- and I -- look, the papers are extensive and I've, at various points, stricken both sides' papers as being over length. The papers are -- that I've finally reviewed, are quite helpful. They're extensive. The Court has done a lot of its own research. I've also, as of yesterday, reviewed the docket from the district court in Nevada. So I've done quite a bit of work on this.

So Judge Hicks, in the district court in Nevada, had entered an order on December 14th, 2010, dismissing certain claims and overruling a motion to dismiss other claims -- denying the motion to dismiss other claims. And while that decision by Judge Hicks in 2010 -- there's no preclusive effect on this Court, I'll be very clear that I don't intend to, at this stage of the proceeding, to rule differently than Judge Hicks did.

So it doesn't even resolve all of the claims, but Judge Hicks went through and granted your motion to dismiss certain of the claims and denied the motion to dismiss other claims. So I'll be blunt. Save your breath. Don't try to convince me to do something different than what Judge Hicks

did.

That isn't to say -- all he did was conclude on certain claims that the complaint was sufficient to state a claim, not whether relief will ultimately be granted. But he denied the motion to dismiss as to certain of the claims -- granted it as to some, denied it as to others. Okay?

MS. SIMMONS: Yes, Your Honor.

THE COURT: So focus -- let's deal with -- so assuming that I'm going to find, at this stage of the proceeding, that Judge Hicks' opinion is persuasive as to the claims as to which he's denied the motion to dismiss, what do you want to tell me now?

MS. SIMMONS: Well, I think a couple of things. I think certain of the claims -- certain arguments weren't made at the motion to dismiss stage.

THE COURT: Yes, that's correct.

MS. SIMMONS: So I think when you're looking at the Nevada nonjudicial foreclosure statutes, we can dismiss those as a matter of law in this court. I think the violation of -- counsel has raised for Longoni that in the Nevada nonjudicial foreclosure scheme, that GMAC and ETS violated 107.080, 107.085, and 107.086.

THE COURT: And your argument is that those statutes weren't effective at the time the notice of default was filed here?

MS. SIMMONS: That's part of it, Your Honor. So, yes. So as concerning the mediation requirements of 107.086, that only applied to notices of default recorded on or after July 1st, 2009. Counsel has argued that we were required to send a new notice of default, because we accepted payments from Ms. Longoni. However, the Evans case demonstrates that you're not require to submit --

THE COURT: And I read the case, and I understand your argument on that.

MS. SIMMONS: Okay. And then moving on to the danger notice requirements of 107.086, counsel contends that we were required to send that. That statute has been in effect since 2003. However in 2003, continuing at the time this took place, it was only required to be sent on loans that fit 15 U.S.C. 1602 Section (aa), which is the Home Ownership and Equity Protection Act. Section (aa), at that time, defined "high-cost home loans". There is no allegation nor has counsel ever raised any allegation that Ms. Longoni's loan was a high-cost home loan. So in that regard, I think that claim can be dismissed as a matter of law.

The notice of sale requirements under 107.085, counsel for Longoni argues that it was required to be served on her via certified or regular mail. We've put forth proof numerous times that it was served via certified and regular mail. The fact that Ms. Longoni didn't claim her mail doesn't mean we

violated the foreclosure statutes.

Additionally, 205.372, which counsel raises as the second claim, there's actually just no private right of action available to counsel for that claim. So as a matter of law, it should come out.

THE COURT: Okay. Anything else you want to say at this point?

MS. SIMMONS: I would argue that the statute of frauds violates her breach of contract claim, and she can't sustain it as a matter of law.

THE COURT: Okay. And Judge Hicks denied your motion to dismiss the promissory estoppel claim.

MS. SIMMONS: Yes.

THE COURT: They argue that, well, even if the statute of frauds would apply to the breach of contract claim, one of the exceptions is promissory estoppel, effectively.

MS. SIMMONS: Yes, Your Honor. And in that regard, there is a case from the Nevada courts which actually says -- it's the Nieto v. Liton Loan Servicing case -- and it actually says that there's an extraordinary high burden that plaintiffs have to prove to sustain a promissory estoppel claim.

THE COURT: And that probably will be true, but we're not at the proof stage.

MS. SIMMONS: Yes, Your Honor.

THE COURT: Okay. I have some questions. I'll come

back after Mr. Beko argues. I have questions for both of you. Go ahead, Mr. Beko.

MR. BEKO: Thank you, Your Honor. I'll try not to review some of the -- all the information that was provided to you before, because as you've noted, it is extensive. I'm just going to comment, I think, on a few points that were raised in the reply brief.

One of our primary challenges in this case has always been that the debtors in the case simply did not have the standing to pursue the foreclosure, because they were not possessed of the promissory note and the deed of trust. And the argument against that is just related to this Edelstein case, which came down from the Nevada Supreme Court, which very, very clearly indicated that all foreclosures in Nevada, the foreclosing party must have standing. And the argument that was raised in the reply was, is that -- that that case only applied to the question of whether or not the foreclosing party had the right to participate in the mediation program.

If the Court looks at that Edelstein case, it's very, very clear. There's about six different places in that decision in which the Nevada Supreme Court said that in order to commence any foreclosure process, regardless of the mediation statutes or not, the party that is pursuing the foreclosure had to be possessed of both the promissory note and the deed of trust. That is a reiteration of another decision,

the Leyva decision that I quoted in my briefs, that came down several years before that, in which the Nevada Supreme Court made the very same point.

In this case, I went through all of the extensive briefing that had -- and the events that had occurred in the underlying litigation to point out that even as of the time of the bankruptcy, GMAC and ETS could never identify who had -- who owned or who possessed the note or the deed of trust. Their answers were entirely inconsistent. And then they finally came back with some amended responses, which they've now again attempted to convince this Court that there was a company by the name of -- I'll grab my notes here just for a second -- just one moment, I'm sorry -- Residential Funding Corp. LLC, which they are claiming owned the notes, and that they transferred those notes then into Residential Asset Mortgage Products, which in turn then put them into this trust that was managed by the bank.

The problem is, is that the documents that they've provided, which is the assignment and assumption agreement, as well as this pooling and --

THE COURT: Yes, the PSA, I mean, I think they're relying on the pooling and servicing agreement as basically it -- assuming that the note and the deed of trust were separated, the effect of the PSA is effectively to reunite them. That's what I took to be their argument.

MS. SIMMONS: That would be correct, Your Honor.

MR. BEKO: The problem that you have with that -- and I'm sorry, Your Honor. I didn't mean to interrupt you if you were not finished.

THE COURT: No, go ahead. I'm done.

MR. BEKO: Is that those two documents were created in 2005, one on December 1st of 2005, the other on December 28th. They've indicated that those documents resulted in the transfer of the Longoni/Gagnon deed into that trust, but they've never shown you that that was one of the -- one of the actual loans that was transferred as part of that.

The real problem, however, occurs that two years after that, the Longoni/Gagnon note was amended by a modified loan, which was handled -- and the agreement is, I think, contained in Exhibit 3 of our moving papers -- on November 2nd of 2007, when Homecoming Financial LLC enters into this loan modification with them, in which that document expressly provides that Homecoming Financial is, in fact, the owner and the possessor of both the note and the deed of trust. Those occurred two years after-the-fact.

So I mean, there's never been any explanation for how it is that if these documents had actually gone into this trust, why is it that two years later, Homecoming Financial, LLC, who was never mentioned in any of the discovery responses of having any ownership interest in the note or deed of trust,

is actually expressly listed in that loan agreement as the lender -- as the holder of the note and the owner of the note. And that was one of our challenges from the very inception. And to this very day, they have never been able to explain how it is that the actual note that they attempted to enforce through the foreclosure process, is by someone that by all of their own documents, they say had absolutely no interest whatsoever in the note or the deed of trust. And to this date, even through their reply brief, they've never been able to answer that question.

They also make these arguments that GMAC Mortgage was authorized as the subservicer of these loans, yet none of the documents that they provided to you, including the documents that they attempted to clear this up with their reply, ever mention GMAC Mortgage in any way, shape, or form. And they certainly don't mention ETS, which was the party that actually was the one that filed the nonjudicial foreclosure documents, as having any rights under those documents.

So I think, from the very inception, this claim cannot be rejected at this stage, because they've never been able to prove that they had the proper standing to commence the foreclosure process.

So I think without being able to prove that key element, none of the objections that they have filed should defeat any of the claims that have been asserted, because they

didn't have any right, under Nevada law, which is very clear under both Edelstein or the Leyva case, that whomever it was, the party that was foreclosing had to have the rights of both of those two documents in order to proceed forward with the foreclosure process.

I will note that in the reply brief, they referenced another case from the Nevada District Court, Hakimi v. Bank of New York Mellon. And I want to comment briefly on that case, to the extent that they are suggesting that that case said that the foreclosing party did not have to establish standing. If the Court takes a moment to look at the history of that case, I think the Court will see that the decision does not stand for the proposition that they're presenting. And that is, because -- the Hakimi case was brought by a pro se claimant. In January of 2012, the defendant in that case filed a motion to dismiss. Mr. Hakimi, although he filed an opposition to it, all he did was put a cover sheet onto his complaint and called that his opposition to the motion.

Nowhere in any of those briefings was the Edelstein or the Leyva decision ever even addressed by the bank, and certainly not by the plaintiff in that case.

THE COURT: But in Hakimi, the court, quoting Birkland v. Countrywide, said, "Parties initiating foreclosure proceedings are not required to prove standing to foreclose in a court of law before initiating the foreclosure process."

That's from 2015 WL 2097872 at *5.

MR. BEKO: Correct, exactly. The problem with the decision, Your Honor, is that nobody mentioned the Nevada Supreme Court decision either Edelstein or Leyva, in which the Nevada Supreme Court very, very clearly said that those elements were absolutely necessary. And the problem with it was, is that those briefs were filed -- in fact, there was only really one brief. The motion to dismiss was filed before the Edelstein decision. It didn't mention the Leyva decision. There was really no opposition. And those briefs sat for over three years in which during the period of time, nobody ever went back to the court and said, hey, by the way, the Nevada Supreme Court has issued the decisions that are very clearly contrary to what we had initially stated in our motion to dismiss.

So I think the Hakimi decision, just is of no value, because quite frankly, the defendant in that case never presented to the Nevada District Court, the clear authority from the Nevada Supreme Court, in the Edelstein or the Leyva cases. And so I just -- I mean without the court being presented with those, and apparently not doing its own research --

THE COURT: But the Hakimi case also quotes from Villa v. Silver State Financial Services, Inc. And that quote is that the law governing nonjudicial foreclosure "does not

require a lender to produce the original note or prove its status as a real party in interest, holder in due course, current holder of the note, nominee of the current holder of the note, or any other synonymous status as a prerequisite to nonjudicial foreclosure proceedings." That's from Silver State.

MR. BEKO: And I understand that. And I think --

THE COURT: And that quotes Kwok v. Recontrust Co., it cites Ritter v. --

MR. BEKO: And again, I think, Your Honor --

THE COURT: -- Countrywide. So I mean, you're making it sound like Hakimi just willy-nilly made some statement that wasn't supported by any prior decisions. But it seems to me that the case relies and quotes from a number of other prior federal court decisions in Nevada.

MR. BEKO: And the problem with that, Your Honor, is that none of them address Edelstein or Leyva, which is the controlling law in Nevada. The Nevada Supreme Court defined what foreclosing parties must do. And I just don't know how you can ignore those two very clear decisions that have described what the standing requirement entails. And the -- none of those decisions that the Hakimi court relied upon ever addressed those either.

And so I just don't think they're of any value, because they don't recognize the very clear law that the Nevada

Supreme Court provided in those two decisions.

THE COURT: And the Trust's response on this point is that any split in the note and deed of trust were cured by the PSA and the assignment and assumption agreement.

MR. BEKO: And clearly those documents that they have provided to you do not do that. They don't --

THE COURT: Well, we may have an issue of fact -- look, I've made clear that I'm not going to, at this stage, disagree with Judge Hicks' ruling when he denied the motion to dismiss certain of the claims. It may well be that you're raising what are disputed issues of fact that I'm not going to resolve -- I mean, when I deal with a claim objection, Mr. Beko, I essentially treat it as I would a motion to dismiss on a complaint. I look to see whether the claim fails to state a claim as a matter of law. And since your claims are largely based on what was the complaint before the district court, and the district court granted some motions and denied the rest of the motion, that's kind of where things sit.

I realize there are arguments that are being raised in these papers that weren't addressed -- weren't raised in the motion before the district court, are raised for the first time here now. But --

MR. BEKO: It --

THE COURT: -- I'm not saying that you lose on your standing argument. What I'm saying is that to the extent that

the standing argument is going to depend on disputed issues of fact, today is -- they're not getting resolved right now.

MR. BEKO: Understood, Your Honor. And I think this is clearly one of the issues that GM -- that the debtors never raised before Judge Hicks. They never argued before Judge Hicks anything relating to the standing issue. And so this is a completely new issue and --

THE COURT: Okay.

MR. BEKO: -- I think theoretically, if this Court were to find that that were not a requirement, then I think the Court could dispose of it. But I think the Nevada Supreme Court has said it clearly is an issue. And I don't believe that the documentation that they have attempted to provide to you --

THE COURT: I guess I --

MR. BEKO: -- in any way, shape, or form --

THE COURT: -- I guess I'd put it this way. A number of the district judges in Nevada seem to disagree with your argument that it's a requirement under Nevada law. I'm not saying who is right and who is wrong. Your argument is that Edelstein -- that obviously on a state law issue, Nevada law is what applies. But there obviously seems to be a difference of opinion about what Nevada law requires.

MR. BEKO: And I think it's just a matter of timing, Your Honor. I think it's just the -- obviously the Hakimi

decision came down after that. But it sat for three years. And if you look at the briefing in it, the briefing was done before those cases were decided. So that --

THE COURT: Okay. I have your point on this, Mr. Beko.

MR. BEKO: Okay. All right.

I guess beyond that, Your Honor --

THE COURT: Let me raise this question with you.

MR. BEKO: Certainly.

THE COURT: And it's in all the extensive briefing and Ms. Simmons raises it today. And that relates to the specific subsections of the Nevada law as to whether they apply here or not. It's the Trust's position that those subsequent amendments to the Nevada statutes don't apply, that the operative trigger is when the notice of default was filed. Here it was before those changes to the statutes. Do you want to address that?

MR. BEKO: Certainly. To the extent that the argument is that the 2009 amendments that amended some of these provisions did not become effective until after the notice of default was filed, that's -- that argument is correct.

Our argument as to the violation of these statutes is twofold. One, it's based upon an argument that this is not a situation where payments were simply made pursuant to some process. This is -- in our case, our contention is that there

was, in fact, an application for a permanent loan modification. There were certain conditions that were placed upon the borrowers in order to pursue that, which was the payment of 1,600 dollars during the interim period, while the request was being reviewed. And they did, in fact, make those payments, and they were told, without any question, that their loan request had been approved.

That is what I think very much distinguishes this from the Evans decision where, in that case, they were just making payments. There was never any agreement to modify the existing loan. And because there was, in fact, an agreement to modify the existing loan, they simply were not making payments during the course of the process, and that's why I think the Evans decision does not apply.

THE COURT: I think that the record is not quite as strong as you describe it as to whether -- what your clients were told about the approval and whether the person Stephenson, who clearly made some statements about it -- you've put in a declaration from Stevens (sic) about it -- whether he had authority and whether it was quickly -- to the extent that it was possibly misunderstood or -- and I know your position is there's nothing ambiguous about it. But there's a dispute about it, that they basically told your clients that it's looking good for a modification, but I don't have the authority to approve it. It's with higher-ups. He may have --

Stephenson may have thought it was likely to get approved; it ultimately didn't.

I think those are going to be disputes that ultimately I'm going to have to hear and decide in the context of an evidentiary hearing.

May I ask you his? Was Stephenson -- I know you put in a declaration. Was he ever deposed? I know there has been some discovery. I'm going to have some questions about that. But was Stephenson ever deposed?

MR. BEKO: He was not, Your Honor.

THE COURT: Okay.

MR. BEKO: What happened was, is that from the inception we tried to get information regarding him, and GMAC Mortgage and ETS said we don't have any information of where he is. We found him just the week prior to the notice of the bankruptcy.

THE COURT: Okay.

MR. BEKO: And I had obtained his affidavit just a couple of days prior. The depositions were set to occur, of all of these involved individuals, within the week after the notice of bankruptcy was filed. So we never had the opportunity to depose him because of the automatic stay. So no, he was never deposed.

In fact, none of the individuals who were responsible for -- who could have explained why it is that these people

were telling them that their request for a permanent loan modification was approved or why they were telling her that her foreclosure was on hold, we never had the opportunity to depose any of those people.

Returning back to your other question. As far as those statutes being inapplicable, to the extent that they were modified to include the foreclosure process, that is accurate. However, as to one of those provisions, 107.085, which has specific requirements as to notices that have to be given, that statute was in effect since 2003. And counsel has indicated that we never alleged that there was -- that it was a high-cost loan. That's clearly in our complaint that that statute applies.

And if you look at the sections of the act that it relates to, the Home Ownership and Equity Protection Act, there are several sections that clearly make this loan applicable to those statutes. And those are contained within 15 U.S.C. 1639.

There are provisions in there that make it applicable if there is a pre-payment penalty. In our case, there was a pre-payment penalty, because the original loan had a modification to it that was done -- when it was originally done in 2005, which was never changed, that limited pre-payment. There was also a provision that made it applicable in 15 U.S.C. 1639 if there was no -- if there was a negative amortization. And in this case, there was a negative amortization, because

the original loan was for 432,000 dollars; that was in 2005. It was an interest-only loan for a period of time. However, when it was modified in 2007, that loan amount, the principal amount of the loan went from 432 to 439. So that made it -- there was a negative amortization between that two-year period.

To the extent that GMAC wants to contend that it was modified to include some type of a balloon payment, that would also make that Home Ownership and Equity Protection Act applicable as well. All of those are contained within 15 U.S.C. 1639.

So the argument that the statute doesn't apply by tis own terms, even in its 2003 version, is simply wrong, because this loan was, in fact, subject to those provisions. So under 107.085, GMAC Mortgage and ETS were required to give a very specific notice, and they were required to produce and serve upon them a copy of the promissory note.

Admittedly, they never did that. Their only objection to the application of that statute was, is that it did not apply because it didn't go into effect until after the notice and deed of -- after the notice of default was filed, which again, in this case, that statute was in effect since 2003.

So clearly that statute was in effect. Our allegations have alleged that they didn't comply with it. If you look at the underlying statute that relates to the Home Ownership and Equity Protection Act of 1994, this was, in fact,

what they have described as a high-cost loan.

Lastly, Your Honor, our argument is, is that because the ETS person most knowledgeable readily admitted that because of the sequence of events that occurred in this case, and because they accepted payments, and because those loan amounts changed, that they felt they were obligated to restart the process.

Now, the only defense that's offered to that by GMAC and ETS now is that those people are not attorneys, and that the Nevada case that was referenced, the Evans case, shows that they didn't have to do that. But I think in this case, again, the distinguishing factor is, these were not simply payments that were made. If you accept the e-mail communications from GMAC's own agent, this was an approved process. And so once that loan modification was approved, then I believe it was appropriate --

THE COURT: You know, if you had gotten a piece -- if your clients had gotten a piece of paper signed by someone at GMAC reflecting the approval of the loan modification, I think -- a) I don't think you'd be here at all; but we are where we are. I mean, that to me is the bar you're going to have to jump over to show that there was, in fact, a binding -- an approval of a loan modification that's binding on GMAC. I'm not saying there was or wasn't, but I'm saying that's going to be an issue.

MR. BEKO: And I agree that at a later stage, we may have to cross that bridge. But at this point in time, I think you have to accept as true, not only the declaration of their own employee, but their own e-mail communications that are indicating to them that, in fact, their loan was approved. This really isn't about whether --

THE COURT: Look, put it this way. Mr. Beko, without deciding anything, you've presented a strong record that this was not GMAC's best day, the way they handled this loan. I think that's a fair statement, without --

MR. BEKO: Yeah, and I mean, I truly think that it's just they just -- one part of this department didn't know what the other part was doing. And they attempted to correct it and unfortunately couldn't. But --

THE COURT: Well, we'll see whether they could or not. I mean, that's going to be an issue.

MR. BEKO: Yeah, I think -- but the point is, in a lot of this stuff, the borrowers in this case didn't know what was going on internally. All they were getting was one side of this. And to suggest that it was not appropriate for them to rely upon these representations --

THE COURT: Can I -- look, let me -- I don't mean to -- I'm only interrupting you because save it for an opening statement, okay?

MR. BEKO: Understood, understood. But --

THE COURT: I've made clear, I'm not ruling from the bench. I mean, there are some portions that the district court did not -- weren't raised in the district court that I've got to consider. Parts of this case are clearly surviving from today; I made that clear from the start. So there's going to be another day.

You've got some strong arguments to make. There'll be an appropriate time to make them. But spare me from it today, okay?

MR. BEKO: All right. I guess lastly, Your Honor, I'm just going to very just quickly, again, touch on this issue of whether the statute of frauds applies. They've cited you a case; we've cited you a contrary one that dealt with all of the applicable Nevada law, the Prince v. United States Bancorp case, in which the court very clearly said even if the statute of frauds might apply, it wouldn't in this case, because by the terms of the loan agreement, it could have been -- it could, in fact, have been fully performed within a one-year period, and so --

THE COURT: That -- I don't see how this could have been fully performed within one year. If you clients were making 1,600 dollars a month payments, how it was possible that this could be fully performed in one year, I don't see it.

MR. BEKO: Well, but I think just the same way --

THE COURT: I think the real issue is that the

terms -- assuming that your clients were told orally by Mr. Stephenson that the loan modification was approved, all of the terms of the modification were not set forth. And I'm not questioning whether your clients acted in appropriate reliance on what they were told or not. That's not today's issue either. But I have problems seeing your argument that this could have been fully performed within one year.

MR. BEKO: The only way that it could have been performed in one year, would have been the same way that the first note and deed of trust was fully performed when they refinanced it with a new one. I mean obviously they weren't going to pay it off over the life of it, but they had the same ability to refinance it in the same way that they had done previously.

THE COURT: Okay. I understand your argument on it.

MR. BEKO: Okay.

THE COURT: I'm not ruling on it now one way or the other, but I understand your arguments about the statute of frauds.

MR. BEKO: Understood. Lastly, Your Honor, the allegation was made in the reply brief that -- and I'm just going to read it: "While e-mails containing some terms regarding loan modification, they omit critical terms such as interest rate, term of the loan modification, modified principal amount."

If you look at the e-mail communication that Mr. Stephenson sent to Ms. Longoni on April 28th of 2009, he specifically describes what the balance would be on the principal, and he gives it to the penny: 269,000 --

THE COURT: Yeah, but he also -- there's e-mail communication from Mr. Stephenson where he says he doesn't have the authority to approve any of this. It's what maybe he was recommending. It had to be run up the chain of command. It required somebody's approval other than Stephenson.

I didn't see anything where he said your loan modification on the following terms has been approved. Am I missing something?

MR. BEKO: No. What he says, Your Honor, is he describes what the terms would be: 269,677.03, five-year interest rate, that would not increase by more than one percent, it would never exceed 13.85. He gives those details. And then he follows that up with numerous other e-mails saying it looks like it should approve. And then finally he says, it is approved.

So if you piece all of those together, they did describe to her precisely what those terms would be. And when I questioned -- I was able to take a couple of depositions, and I asked the person most knowledgeable from GMAC Mortgage whether there was any other loan modification proposal that was on the table, he said no, this was the only one. So for them

to now come back in after-the-fact and say well, those terms were not specific enough, because when he sent his follow-up e-mail he said I'm not certain if that was what was approved, that's the way I had it put in, they want to ignore the fact that they don't have any evidence that there was any other terms. This was the only one that had ever been presented. If it was approved or it wasn't approved, there could only be one request.

THE COURT: Okay. Anything else you want to raise now?

MR. BEKO: If you could you give me just one moment --

THE COURT: Sure.

MR. BEKO: -- to just look through my notes, I would appreciate it.

Your Honor, I think the remaining points, I think were raised in our extensive opposition.

THE COURT: Okay, Ms. Simmons go ahead. And I do want you to address Mr. Beko's argument that the 2003 Nevada statute applies to the loan here because of the pre-payment provision, because the negative amortization.

MS. SIMMONS: Happy to, Your Honor. In 107.085, Mr. Beko attached to his response brief the statutory text as it existed. And the provision states: "On the date the trust agreement is made, the trust agreement is subject to the provisions of Section 152 of the Home Ownership and Equity

Protection Act of 1994, 15 U.S.C. 1602(aa)." There's no mention of 1639, which is the provisions that Beko cites as support for the fact that Ms. Longoni's notice -- or loan qualifies for receipt of this danger notice.

And looking at 1602(aa) and 12 CFR, the Code of Federal Regulations, there are specific definitions you have to meet to qualify under Section (aa), as that statute existed in 2005.

THE COURT: Wait. Your position is you look to the loan as originally granted.

MS. SIMMONS: Yes.

THE COURT: If there's a subsequent modification that capitalizes unpaid interest and you wind up with a higher principal balance, that doesn't make the statute applicable?

MS. SIMMONS: Yeah, the statute says on "on the date the trust agreement was made."

THE COURT: Okay. All right.

MR. BEKO: Which Your Honor, it was the original note in 2005. That's the one that contained the no pre-payment. That's the one that contained the interest only payments. And that's -- and as a result of those, those things did occur.

THE COURT: Okay. You want to just briefly -- Ms. Simmons, you want to address that?

MS. SIMMONS: Section (aa) specifies that high-cost home loans are those where more than eight percent of the

points and fees, as that term is defined under the Code of Federal Regulations, exceeds the total loan amount. So you have to meet that definition under the Nevada statute to qualify for receipt of the danger notice.

THE COURT: Okay. All right, let me -- I want to shift -- I don't want to hear any more about the claim objection. So I looked at the district court docket. I know you had a large number of case management conferences with Magistrate Judge Cooke, I think was the name; a number of hearings and conferences with Judge Hicks. Mr. Beko, what discovery remains to be done?

MR. BEKO: Well, Your Honor, we obviously would like to take the depositions that we had noticed of those --

THE COURT: How many had you noticed?

MR. BEKO: I think there were about four, if I remember correctly. That has been several years now. I think there were four or five.

THE COURT: Do you know where everybody is? Obviously nobody works for ResCap anymore.

MR. BEKO: The only one that I know where it is, is Mr. Stephenson.

THE COURT: Okay. Look, here -- I'm not suggest -- I want to be very clear. I'm not suggesting that it was taking too long for this to move forward when it was in the district court. It's going to move forward quickly here. Okay?

So obviously I need to get a decision out, because there are -- I'm making it clear, this case is surviving. Whether all the claims survive is a different issue. But they all arise out of the same facts. So I don't think that it's necessary to wait for my decision to get moving on discovery. Okay.

What you need to do -- I'm addressing this to both sides -- is meet and confer and discuss and come up with a proposed discovery plan. And you're going to have a hard time convincing me why all of the remaining discovery can't be done in no more than 120 days. Okay. Hopefully sooner than that. Probably -- I would like to see you finish discovery within ninety days. Even that, I'm maybe being too generous. But there's no way I'm going to permit discovery beyond 120 days.

So the two of you are going to need to confer and come up with a discovery plan. If you get it done sooner, you'll get a hearing sooner. Okay? I want to make it clear, okay.

We need to move forward. So other than your -- and I know you had served written discovery, Mr. Beko. I saw there were amendments to their responses and stuff like that. Have you gotten the documents, at this point?

MR. BEKO: No. They've given the me the documents -- at least they gave me the complete documents that they gave you excerpts of, but those documents don't reference the loan. So there's nothing in there that talks about how it is that

Homecomings Financial supposedly is modifying a loan that it didn't own two years after it went into this trust. I mean, they've given me no documentation that references that.

THE COURT: All right. So look, you need to move forward expeditiously. Get all the documents. And if they don't exist, they don't exist. I want -- the first order of business is get the documents produced. Talk about it. Figure out what remains to be done. I don't have a case management order entered in this matter. You can look at my -- the court's website, if you look at the chambers rules, Mr. Beko, you'll see I have a form. It's usually in adversary proceedings; this is a claim objection. But I apply it in claim objections as well. It sets forth my procedures for dealing with discovery disputes. They're not complicated.

If you have a discovery dispute, the parties need to -- counsel need to meet and confer in an effort to resolve the dispute. If you're unable to resolve it, the party needing the assistance of the Court arranges for a telephone conference with the Court. I generally am able to hold those within a day or two. They're very quick. I don't want to see -- I don't even need to see letter briefs. I just -- you'll describe for me what the issues are, and I'm generally able to resolve the issue on the telephone, very quickly.

If I feel I need some legal authority I'll ask for short letter briefs. I try -- I don't do -- I don't deal with

motions to compel. We deal with it by these discovery conferences on the phone. You raise the issues. If I want letters, I'll tell you the letters, and we resolve it very quickly. I try to hold down, as much as possible, unnecessary paperwork in motions and responses to motions and the time that's consumed with that.

Discovery disputes are generally resolved within a day or two of them being raised with me. If there are privilege issues, sometimes I'll ask for letter briefs with respect to that. But I try to move my docket along very quickly.

So by next week, the two of you should confer and I would like you to -- if you could file a joint letter, that would be helpful, setting out what your discovery plan is and how you think it's going to take to accomplish. And I've made clear, hopefully it'll be done within 90 days, and it isn't going to be longer than 120 days, I can assure you of that. Okay.

MR. BEKO: My only request, Your Honor, is I'm getting ready to leave, and I'm going to be gone all of next week, would the early part of the following week be acceptable to you?

THE COURT: Yes, it would.

MR. BEKO: Thank you.

THE COURT: It absolutely would. Your office is in Reno, is that -- do I understand correctly?

MR. BEKO: That's correct, Your Honor.

THE COURT: Okay. Have you appeared before Judge Greg Zive in the bankruptcy court?

MR. BEKO: Many times. Well, no. Actually that is not correct. I don't do any bankruptcy --

THE COURT: Okay.

MR. BEKO: -- work at all, but I'm close friends with Judge Zive.

THE COURT: And he's a good friend of mine, too. I have the greatest respect for him. He's a wonderful judge, and a wonderful person.

MR. BEKO: Yeah, he's one of the few truly amazing, amazing legal minds I've ever seen in my life.

THE COURT: Yeah. All right, we'll put that aside.

All right, so when you get back from vacation the two of you ought to speak and let's get this moving.

MR. BEKO: Very well, Your Honor.

THE COURT: Okay. Now, one of the claims that Judge Hicks denied the motion to dismiss, was the claim for intentional infliction of emotional distress. The two of you need to confer, because 28 U.S.C. Section 157(b)(5) -- let me find it in front of me here -- 157(b)(5) provides: "The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending or in the district court

in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending."

My recollection is, there's a split in authority whether a claim for intentional infliction of emotional distress would be considered a personal injury tort. The legislative history is almost nonexistent on 157(b)(5).

In the Supreme Court's 2011 decision in Stern v. Marshall, which deals with the authority of bankruptcy judges to enter final orders of judgment, Chief Justice Roberts, in the majority opinion, deals with an issue raised by J. (sic) Pierce Marshall, with respect to 157(b)(5). Marshall had filed a defamation claim in the Chapter 7 bankruptcy of Anna Nicole Smith. She then counterclaimed for interference with an expectancy from the estate of Pierce Marshall's father.

The main thrust of Stern v. Marshall dealt with whether the bankruptcy court could enter a final order of judgment on Anna Nicole -- the estate's claim against J. (sic) Pierce Marshall. That led to Stern v. Marshall, then in 2014, the Arkison decision and a couple of weeks ago, the Wellness decision from the Supreme Court.

But a somewhat little-noticed portion of Stern v. Marshall was the chief justice's explanation that 157(b)(5) is not jurisdictional, and in fact, in Stern v. Marshall, the court concluded that Pierce Marshall consented to the bankruptcy court resolving the defamation claim, therefore the

Supreme Court didn't have to decide whether a defamation claim fell within personal injury tort.

The two of you need to confer -- I actually have a trial in one of the ResCap proceedings next week where the parties have consented to the trial that -- I gave them the choice, either consent or brief the issue in this upcoming case, whether it was a personal injury tort or not. They both just agreed they'd try it here.

So the two of you need to confer with what your position is with respect to whether intentional -- whether the intentional infliction of emotional distress claim is a personal injury tort within 157(b)(5). And if you believe it is -- if one side says yes and one side says no, you're going to have to brief that issue. So at least tell me right away whether you agree or disagree. And if both sides can avoid having to brief the issue, if you agree, you'll simply just go ahead and try it here. I'm not putting pressure on anybody about it, but I just want to -- I want to move this case along. I don't want to get five months down the road and then find out that there's this issue. So I'm raising the issue with you both today.

MR. BEKO: Your Honor, if I might ask -- just showing my ignorance. Trying it here means trying it to the bench, correct?

THE COURT: That's correct. It generally does. There

is -- within 157(c) -- let me see if I can put my finger on the specific subsection.

MR. WISHNEW: 157(e), Your Honor?

THE COURT: Yeah, I want to see, 157 -- yes. 157(e) -- this is 28 U.S.C. 157(e): "If the right to a jury applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all parties." When the district court has expressly consent -- the district court has provided by rule that we can. The parties have to consent.

None of my colleagues -- I've been here eight-and-a-half years. My colleagues have been here much longer. Nobody can remember a jury trial in this court. But there is that provision in 157(e) that deals with it.

But you all need to address this. The issue -- and I must say, it's not clear whether intentional infliction of emotional distress would or would not be considered a personal injury tort. And I won't elaborate on it further, at this point. You can all go and research it if you want.

MR. BEKO: Very well. Thank you, Your Honor.

THE COURT: But I want to get this issue -- it's important that the remaining claims that are involved in ResCap be dealt with promptly by whatever court's going to do it. So,

okay, let me stop there.

So the first thing to do is to confer about it, and you'll let me know what the parties' views are.

MR. BEKO: Thank you.

THE COURT: Okay. All right. Anything else -- let me ask you, Ms. Simmons, what discovery do you believe your client wishes to take?

MS. SIMMONS: I think at this point, Your Honor, the only deposition we would want to take is the deposition of Nate Stephenson.

THE COURT: Okay. Are you able to identify for me, Mr. Beko, who are the other deponents that you want to take --

MR. BEKO: If you could give me a couple of minutes, Your Honor, I could probably pull that notice up that I had --

THE COURT: I'll tell you what. The two of you ought to confer about it when you speak after your vacation. Okay? so let's avoid surprises. Look, there's always odds and ends that come up in discovery, but you --

MR. BEKO: Sure.

THE COURT: -- this case has been around long enough that I think you both know what needs to be done.

MR. BEKO: True.

THE COURT: Okay? All right. Anything else either of you want to say, at this point?

MS. SIMMONS: No, Your Honor.

THE COURT: All right. So the Court will, in due course, will enter a decision. But I've already made clear, at least as to those things that Judge Hicks denied the motion to dismiss, they're going to survive. Okay?

MS. SIMMONS: Thank you, Your Honor.

MR. BEKO: Very well. Thank you, Your Honor.

THE COURT: Thank you very much. All right, we'll adjourned.

Is there anything else, Mr. Wishnew?

MR. WISHNEW: That's it.

THE COURT: I think this is it, right?

MR. WISHNEW: That's it.

THE COURT: Okay, we're adjourned. Thanks very much.

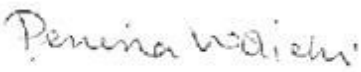
(Whereupon these proceedings were concluded at 11:16 AM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.



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PENINA WOLICKI

AAERT Certified Electronic Transcriber CETD-569**

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: June 8, 2015